

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
JULY 3, 2007**

CALL TO ORDER The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, (came in at 6:20 P.M.), Gina Klempel, Craig Wagner, and Mark Hash. Scott Hollinger had an excused absence. Annie Thompson, Kirsten Holland, Eric Giles and Jeff Harris represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 10 people in the audience.

APPROVAL OF MINUTES Klempel made a motion seconded by Wagner to approve the June 5, 2007 meeting minutes.

The motion was carried by quorum.

**MACNCO
CONDITIONAL USE
PERMIT
(FCU-07-09)** A request by Macnco LP, (Lanny and Ardell McDonald), for a Conditional Use Permit to operate a restaurant/tavern within the Lakeside Zoning District. The applicants are proposing to use an old restaurant site to construct a new building for their business. The property is located at 105 and 115 Blacktail Road in Lakeside, and can legally be described as Tracts 1SD and 1SAA in Section 18, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana.

STAFF REPORT Annie Thompson, of the Flathead County Planning & Zoning Office, reviewed Staff Report FCU-07-09 for the Board.

BOARD QUESTIONS Wagner asked if there would be an ADA requirement for the number of handicapped parking spaces.

Thompson said the Flathead County Planning and Zoning Office wouldn't impose any, but there might be requirements at the state level.

Wagner asked if they have a will-serve letter from the Lakeside Water & Sewer District.

Thompson stated she spoke with them and they said the property is already hooked up.

Klempel asked if the building is already established.

Thompson said they are in the middle of building it right now and it's almost complete.

APPLICANT

Andra Townsley represented her parents who the applicants. She said they own the building and the land. She and her husband will be operating the restaurant. Her family has been part of the Lakeside community for 30 years and they are both proud and excited to be a part of the business community. She thanked the planning office for their support and recommendation of approval and said they agree to comply with all the proposed conditions.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

None.

**BOARD
DISCUSSION**

Wagner stated that the tavern looks great and will be an addition to the Lakeside community.

Hash questioned condition #14 and the ability to enforce it. He asked the applicant if they were planning any activities outside the restaurant such as live bands or speakers.

Townsley said no and they would be landscape to help prevent noise pollution.

Hash said his concern is how new owners would interpret the condition if the applicants sold their business. He asked if the planning office had a recommendation of language that could be added to the existing condition to mitigate that. He was also concerned about noise being confined on the premises.

Staff recommended a couple of options to the Board including restricting outdoor music or live performances to certain hours.

Hash said the purpose is to keep noise on the premises.

The Board and Staff discussed, at length, possible variations to condition #14 to mitigate noise pollution.

MOTION	Wagner made a motion seconded by Klempel to adopt Staff Report FCU-07-09 and approve the Conditional Use Permit.
BOARD DISCUSSION	None.
ROLL CALL	On a roll call vote the motion passed unanimously.
QUIRK CONDITIONAL USE PERMIT (FCU-07-08)	<p>A request by James and Tabitha Quirk, for a Conditional Use Permit to operate a camp and retreat center within the Echo Lake Zoning District. The applicant is proposing to use the existing cabins and RV hook-ups for the operation of the business. The property is located at 1905 LaBrant Road.</p> <p><i>Craig Wagner stepped down for this proposal.</i></p>
STAFF REPORT	Eric Giles of the Flathead County Planning & Zoning Office reviewed Staff Report FCU 07-08 for the Board.
BOARD QUESTIONS	None.
APPLICANT	<p>James Quirk, the applicant, moved here about four years ago from New Orleans. When they bought the property it had been abandoned for six years. They fixed up the main house and two of the cabins; the others will be finished at a later date. It will be very limited use with four cabins and one RV lot. He won't fix the rest of it up without approval from the Board. They live on the premises full time. He thanked the planning office for their time, effort, and support.</p> <p>Sagami asked which cabins had been fixed up.</p> <p>Quirk pointed them out on the picture Staff provided. He is not changing anything just fixing it up.</p> <p>Sagami asked if the RV hook-up was his idea or the planning staff.</p> <p>Quirk said there are four poles for hook-ups but after talking with the planning staff, he figured one would be enough. The main focus is the cabins.</p> <p>Sagami asked about the term "retreat" in his application.</p>

Staff said it is the zoning definitions.

Quirk said it is for the general public; they want to keep it quiet. The only property that abuts their property is the marina; no other neighbors would be impacted.

Sagami asked how Quirk felt about the quiet hours of operation.

Quirk said he had no problem with quiet hours as it would be respectful to his neighbors.

PUBLIC COMMENT None.

STAFF REBUTTAL Giles elaborated on why they only wanted to utilize one RV lot. He said if they were allowed to utilize the remaining RV hook-ups onsite, it would become a subdivision by rent or lease. The applicant would then have to go through a preliminary plat approval process. Giles said, to relieve that burden, he recommended they only use one RV hook-up.

Sagami asked if two or more hook-ups would trigger that process.

Giles said if you have six or more spaces, including the cabins and RV hook-ups, then you are creating a subdivision for rent or lease. He read a condition he wanted to add regarding the number of spaces for rent and the footprint of the property for future use.

The Board and Staff discussed the condition as proposed.

Sagami asked the applicant if the proposed condition was acceptable to him.

Quirk stated it wouldn't be a problem.

Klempel asked if the remaining two cabins are salvageable.

Quirk said they are salvageable and are just in need of minor repairs. He showed the Board pictures of the two cabins that had not been repaired and the two that were ready for use.

Klempel asked if they put metal roofs on all the buildings.

Quirk said yes.

Hash said the Board's standard lighting condition fits this circumstance. He asked Staff if they would look into more specifics for this condition because the statement has to be further defined as to specific types of lighting the industry has to offer.

**APPLICANT
REBUTTAL**

None.

**BOARD
DISCUSSION**

None.

MOTION

Hash made a motion seconded by Klempel to adopt Staff Report FCU-07-08 as findings-of-fact and issue a Conditional Use Permit with amended conditions.

**BOARD
DISCUSSION**

Klempel asked about the lakeshore permit stating this was on McGregor Lake.

Staff said it is a standard permit and that was a typo; it should have read Echo Lake.

ROLL CALL

On a roll call vote the motion passed unanimously.

**VAN HELDEN
ZONING VARIANCE
(FZV-07-04)**

A request by Stephen and Naine Van Helden for a Zoning Variance to property within the West Side SAG-10 West Valley Overlay, (Suburban Agricultural) Zoning District. The applicant is requesting a variance to section 3.07.040.1, minimum lot area, of the Flathead County Zoning Regulations, which requires 10 acre lots. The applicant is requesting to adjust the boundaries between his tract and two adjoining tracts owned by family members, creating one 24 acre tract and two 4.6 acre tracts. The property is located at 1100, 1138 and 1150 Three Mile Drive.

Mark Hash stepped down for this proposal.

STAFF REPORT

Kirsten Holland reviewed Staff Report FZV-07-04 for the Board.

BOARD QUESTIONS

Sagami asked if there was any thought about the parcels being 5 acres as opposed to 4.7 to at least conform to SAG-5 zoning.

Holland asked the technical assistant who indicated, based on topography, the 4.7 acres worked better. She deferred to the technical assistant for an answer. She didn't mention it because the belief is this property will be annexed into the city and then it won't matter. She discussed the zoning in the area and spoke about what the applicant is able to do on his property.

APPLICANT

Steve Van Helden, the applicant, introduced family members present. He bought the property about 15 years ago and said he would never subdivide it but wanted to share it with his kids. They did a family transfer and gave each daughter 10 acres. The daughters are not able to maintain these large pieces of land so he is requesting a boundary line adjustment to help the daughters out. He has no intention of subdividing and will maintain the density, which is 3 homes per the Zoning Regulations. He spoke about the density in the area and reiterated he had no intentions of subdividing any further but wanted to maintain the integrity of the land.

Sagami asked how Van Helden felt about the West Valley Land Use Advisory Committees' recommendations.

Van Helden stated he had mixed emotions. His intent is not to create any more parcels. He spoke about his son who would get the short end of the stick as he can only create 2 parcels. He has no intention of making a subdivision and would like to keep it the way it is; however, he is nervous about deed restrictions as those are very difficult to reverse if something happens. He would do a deed restriction if he had to. He is staying within all the zoning regulations for density and is not excited to do a deed restriction because he doesn't know all of the ramifications of a long-term deed restriction. It's a permanent thing on a property. If he had to he would but they will not ask to subdivide anyway, and the city of Kalispell will be annexing the property in the future. He left it up to the Board.

Wagner asked if the city of Kalispell is slowly but surely creeping up on his property.

Van Helden said yes there are lots of houses going up all around them and they are only trying to do 3 houses on 30 acres not to subdivide but to share the property with the family.

PUBLIC COMMENT None.

STAFF REBUTTAL None.

APPLICANT None.

REBUTTAL

BOARD

DISCUSSION

Wagner asked what the ramifications of a deed restriction are.

Klempel said it's an encumbrance really.

Holland said she hasn't seen a deed restriction on anything she has worked on that states 'until such time'.

Sagami said it would severely encumber the property.

Holland stated if the applicant came into the office in the future to divide the property again, staff would say under the current zoning he couldn't and once he is annexed into the city the property would be zoned accordingly.

Harris said there is an understanding that if they agree to be annexed into the city, there would be up-front infrastructure costs and the only way to recover any of those fees or capitalize is through density. They'll offer the density through rezoning to be sure the developer can recover those costs.

Sagami stated the applicants want to avoid that but he might want to give his son some land in the future so he probably wouldn't want to be annexed into the city because of the cost for one more split.

Harris said right now they are in compliance with the overall zoning. To break it out again would bring it into non-compliance and Staff wouldn't support going below the density of the parcel.

Sagami asked if there were any way to re-work this application to get a fourth lot for Van Helden's son.

Holland said he could still go after the fact. There would be some lot aggregation that would have to take place, but if he really wanted to get an extra lot out of it, he could get an additional lot by going through the Subdivision Regulations for a cluster subdivision in the West Valley Zoning District. He could come back through subdivision to create an

additional lot. West Valley clustering is pretty broad. You basically have to keep the lots in one area and keep the rest for open space. He would have 50% in open space which he could do because it's a 33-acre parcel. He could theoretically come back through subdivision and create an additional lot for his son.

Harris stated you do not create lots through boundary line adjustments. You manipulate the permanent boundaries of each lot but you can't create lots. That's the reason they are restricted at this time to the number of lots they had last time.

Holland said the other thing he could do would be to sell the large lot to his son or leave it to his son and the son could annex into the city.

Van Helden said he was really concerned about putting a permanent easement on this piece of property. There are a lot of things that could go wrong in the future.

Holland said that's why Staff didn't propose one.

Van Helden said he wouldn't be opposed to putting a restriction stating he couldn't do anything to the property for the next 5 years or something. If he had something like that at least there would be an end to it someday.

Holland explained why Staff does not need any kind of restrictions on the property.

Klempel said she does not want to put any restrictions on the property.

Sagami and Wagner agreed.

Harris said given the unique circumstances regarding this application, if the Board didn't put a restriction on the property it would not be setting precedence.

MOTION	Klempel made a motion seconded by Wagner to adopt Staff Report FZV-07-04 and grant the Conditional Use Permit.
BOARD DISCUSSION	None.
ROLL CALL	On a roll call vote the motion passed unanimously.
OLD BUSINESS	None.
NEW BUSINESS/ PUBLIC COMMENT	<p>Harris gave the Board a heads up as to what they would see at the next meeting in August.</p> <p>Klempel asked how the new state law would affect the gravel pit.</p> <p>Harris said he doesn't believe the new state law comes into play. However, the zoning code has been revised to where gravel operations could be prohibited in any district where there are residential uses allowed. There is also a committee recommending some text changes. We had proposed language that we would have to mitigate gravel operations in the agricultural zoning districts. The way it reads now, the Board could prohibit gravel operations based on the statute that says you can prohibit in residential areas.</p> <p>Harris spoke about the floodplain regulations having a variance procedure and hypothetically there is a Floodplain Board of Adjustment. In reality, we would use the existing Board of Adjustment for those variances. Staff will be cleaning up some language in the floodplain regulations to remove the Floodplain Board of Adjustment and just put the Flathead County Board of Adjustment. The variances don't happen often, but when the office gets an application for one, it will be brought before this Board.</p>
ADJOURNMENT	The meeting was adjourned at approximately 7:20 on a motion by Klempel seconded by Wagner. The next meeting will be held at 6:00 p.m. on August 7, 2007.

Scott Hollinger, Chairman

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 8/7/07